

### **REMARKS**

Claims 1, 3-6, and 8-37 are pending in the current application. Claims 2 and 7 have been cancelled. Claims 4-6, 10-13, 15, 16, 20 and 22-33 are withdrawn from consideration pursuant to 37 CFR 1.142(b). Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claims 1-3, 14, 17, 18, 21, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,056,751 to Fenton, Jr. Claims 1-3, 7-9, 14, 19, and 34-37 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,834,752 to Van Kampen. Claims 1-3, 19, and 34-37 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,368,326 to Dakin et al.

#### **The Specification Is Amended To Correct an Obvious Error**

In the specification, paragraph [0010] has been amended to change “second interior face” to “first exterior face” to correct a typographical error. As is clear from specification, for example, paragraph [0058], the first member defines at least a first interior face and a first exterior face, not second interior face, while the second member defines at least a second interior face and a second exterior face.

#### **Claim Amendments**

Claims 1, 3, 9, 21, 36, and 37 have been amended to more particularly recite what Applicants regard as their invention. Support for the amendments may be found at least on Fig. 1C and the claims as originally filed.

#### **The Claims Patentably Distinguish Over U.S. Patent No. 6,056,751**

Claims 1-3, 14, 17, 18, 21, and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,056,751 (“the ‘751 patent”) to Fenton, Jr. The ‘751 patent teaches “an anchor element which is installed in a bone or other tissue, and a joiner element which mates with the anchor element to define a tissue capture region between them.” (‘751 patent, abstract.) As characterized by the Examiner, the ‘751 patent teaches a first member (e.g., a joiner element 26) having a first engagement element (e.g., leg 54) and an anchor element (e.g., barb 52) both projecting from the interior face of the first member. Moreover, the ‘751

patent teaches a second member (e.g., an anchor element 12) having a second engagement element (e.g., bore 50). However, the '751 patent fails to teach "an anchor located at a second location between said proximal and distal ends, different from said first location and projecting from said first exterior face of said first member" as recited by amended claims 1 and 36.

For the above reasons, Applicants respectfully request that the Examiner reconsider and withdraw the § 102 rejection of claims 1 and 36 based on the '751 patent. Since claims 3, 14, 17, 18, and 21 all depend from claim 1 and recite further limitations thereon, Applicants also request that the Examiner reconsider and withdraw the § 102 rejection of those claims based on the '751 patent. Claim 2 has been cancelled, rendering the rejection moot with respect to that claim.

The Claims Patentably Distinguish Over U.S. Patent No. 4,834,752

Claims 1-3, 7-9, 14, 19, and 36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,834,752 ("the '752 patent") to Van Kampen. The '752 patent teaches a screw 32 which is inserted into a bushing 34 to affix augmentation device 10 to the tibia. ('752 patent, col. 3, ll. 62-68) The '752 patent teaches a first member (e.g., screw 32) having a first engagement element (e.g., threads 44) projecting from the interior face of the first member. The '752 patent further teaches a second member (e.g., bushing 34) having a second engagement element (e.g., surface of portion 40) and anchor elements (e.g., spikes 38) projecting from the exterior face of the second member. Thus, the '752 patent fails to teach "an anchor located at a second location between said proximal and distal ends, different from said first location and projecting from said first exterior face of said first member" as recited by amended claims 1 and 36.

For the above reasons, Applicants respectfully request that the Examiner reconsider and withdraw the § 102 rejection of claims 1 and 36-37 based on the '752 patent. Since claims 3, 7-9, 14, and 19 all depend from claim 1 and recite further limitations thereon, Applicants also request that the Examiner reconsider and withdraw the § 102 rejection of those claims based on the '752 patent. Claim 2 has been cancelled, rendering the rejection moot with respect to that claim.

The Claims Patentably Distinguish Over U.S. Patent No. 6,368,326

Claims 1-3, 19, and 34-37 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,368,326 ("the '326 patent") to Dakin et al.

The '326 patent teaches a screw 50.2/50.3 which passes through a ring 50.1 to fasten both the screw 50.2 and the ring 50.1 to the bone. ('326 patent, col. 9, ll. 10-19) The '326 patent teaches a first member (e.g., screw 50.2/50.3) having a first engagement element (e.g., portion of screw 50.2) on the interior face of the first member. The '326 patent further teaches a second member (e.g., ring 50.1) having a second engagement element (e.g., aperture in ring 50.1). However, the '326 patent fails to teach the first member having an anchor element projecting from its exterior face. Thus, the '326 patent fails to teach "an anchor located at a second location between said proximal and distal ends, different from said first location and projecting from said first exterior face of said first member" as recited by amended claims 1, 36, and 37.

For the above reasons, Applicants respectfully request that the Examiner reconsider and withdraw the § 102 rejection of claims 1, 36, and 37 based on the '326 patent. Since claims 3, 19, and 34-35 all depend from claim 1 and recite further limitations thereon, Applicants also request that the Examiner reconsider and withdraw the § 102 rejection of those claims based on the '326 patent. Claim 2 has been cancelled, rendering the rejection moot with respect to that claim.

Copies Of Previously Submitted Information Disclosure Statement Submitted Herewith

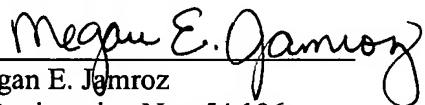
Applicant resubmits herewith a copy of a previously submitted Information Disclosure Statement filed on December 19, 2001. Applicant attaches a copy of the return receipt postcard indicating receipt of the original documents by the U.S. Patent and Trademark Office ("USPTO") on December 19, 2001. Applicant requests that an initialed copy of the 1449 form be provided with the next communication from the USPTO.

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicants submit that the pending claims are in condition for allowance. Early and favorable reconsideration is respectfully solicited. The Examiner may address any questions raised by this submission to the undersigned at 617-951-7000. Applicants hereby petition for an extension of time and request that the extension fee and any other fee required for timely consideration of this submission be charged to our Deposit Account No. 18-1945, under Order No. MIY-P01-012 from which the undersigned is authorized to draw.

Dated: January 21, 2005

Respectfully submitted,

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